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Nagasari Unggul Sdn Bhd v Tee Chee Hong

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HIGH COURT (SHAH ALAM) — CIVIL APPEAL
NO BA-12BNCVC-9-02 OF 2018
WONG KIAN KHEONG J
19 FEBRUARY 2019

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Contract — Agreement — Formation offer and acceptance — Whether there was an agreement between parties — Whether contract was invoices and purchase orders constitute proposal and acceptance — Whether defendant estopped by its conduct from denying existence of agreement — Whether the defendant had erroneously made part payment to plaintiff — Contract Act 1950 s 2(a) & (b)

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This was an appeal arising out of the decision of the sessions court. The plaintiff contended that there was an agreement between the plaintiff and defendant for the supply of manpower (the parties in this judgment are referred to as they are in the SC). After the plaintiff had provided the services, the plaintiff issued 12 invoices to the defendant for a total sum of RM306,766.59, after receiving the 12 invoices, the defendant issued 12 purchase orders ('12 POs') to the plaintiff regarding the outstanding sum. The defendant made part payment of RM44,565.53 by way of the defendant's cheque and issued a payment voucher ('PV'); there was an outstanding sum. At the sessions court, the plaintiff filed to recover the outstanding sum. The defendant in turn contended that they did not agree for the plaintiff to supply labour and that the defendant's managing director had signed the 12 POs, PV and the defendant's cheque which accounted for the part payment by mistake. The question to be determined is whether there can be a contract to provide services when an invoice is issued by a party providing the services before the issuance of a purchase order ('PO') by the party who receives the benefit of the services. The issues to be determined are: (a) whether there was an agreement between the plaintiff and defendant when invoices were first issued by the plaintiff before the issuances of the defendant's PO; (b) whether the defendant is estopped by its conduct from denying the existence of the agreement; and (c) whether the defendant had erroneously made a part payment to the plaintiff.

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Held, dismissing the appeal with costs

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- (1) An agreement had been concluded even before the issuance of the 12 invoices by the plaintiff. This is based on the fact that the plaintiff had signified to the defendant their willingness to provide the services, within the meaning of s 2(a) of the Contracts Act 1950 ('the CA') before the 12 invoices and POs were issued. In turn, the defendant had signified his

assent to this to the plaintiff, within the meaning of s 2(b) of the CA, before the issuance of the aforementioned invoice and POs. The invoices and the POs did not constitute proposal and acceptance within the meaning of s 2(a) & (b) Contract Act (see para 21).

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- (2) The sessions judge had not erred in fact in deciding that the agreement had been concluded. The defendant's omission to deny the plaintiff's statement of account estopped it from denying the existence of the agreement and the fact that the judgment sum was due from the defendant to the plaintiff. The court applied the doctrine of equitable estoppel against the defendant (see para 22).

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- (3) The sessions judge was correct in deciding the agreement had been concluded. There was no basis to accept that the defendant had mistakenly made the part payment. The defendant only counterclaimed that the part payment was made erroneously after the filing of the original action at the sessions court. It was clear that the counterclaim was an afterthought with the sole purpose of stifling the original action (see para 23).

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[Bahasa Malaysia summary]

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Ini merupakan rayuan yang timbul daripada keputusan mahkamah sesyen. Plaintiff mengatakan bahawa wujud satu perjanjian di antara plaintiff dan defendan untuk pembekalan tenaga kerja (pihak-pihak dalam alasan penghakiman adalah dirujuk sepertimana di mahkamah sesyen). Selepas plaintiff telah membekalkan perkhidmatan ini, plaintiff telah mengeluarkan 12 inois kepada defendan yang berjumlah RM306,766.59, selepas menerima 12 inois, defendan telah mengeluarkan 12 purchase orders ('12 PO') kepada plaintiff berkenaan dengan jumlah tertunggak. Defendan telah membuat sebahagian daripada pembayaran tersebut melalui cek defendan dan mengeluarkan baucar bayaran ('PV'); wujud jumlah tertunggak. Di mahkamah sesyen, plaintiff telah memfailkan tindakan untuk mendapatkan kembali jumlah tertunggak tersebut. Defendan pula mengatakan bahawa mereka tidak bersetuju untuk plaintiff membekalkan tenaga kerja dan pengarah pengurusan defendan telah menandatangani 12 PO, PV dan cek defendan yang mewujudkan pembayaran sebahagian tersebut secara khilaf. Persoalan untuk ditentukan adalah sama ada boleh wujud kontrak untuk perkhidmatan apabila satu inois dikeluarkan apabila sebahagian daripada perkhidmatan disediakan sebelum pengeluaran *purchase order* ('PO') oleh pihak yang menikmati perkhidmatan tersebut. Isu-isu untuk diputuskan adalah: (a) sama ada wujud perjanjian antara plaintiff dan defendan apabila inois mula-mula dikeluarkan oleh plaintiff sebelum pengeluaran PO defendan; (b) sama ada defendan diestop oleh sebab perlakuannya daripada menafikan kewujudan perjanjian tersebut; dan (c) sama ada defendan telah secara khilaf membuat sebahagian pembayaran kepada plaintiff.

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A Diputuskan, menolak rayuan dengan kos

- (1) Satu perjanjian telah diselesaikan sebelum pengeluaran 12 inuis oleh plaintif. Ini adalah berdasarkan fakta bahawa plaintif telah memberi petanda kepada defendan kesanggupannya untuk memberikan perkhidmatan tersebut, sepertimana dalam maksud s 2(a) Akta Kontrak 1950 ('AK') sebelum 12 inuis dan PO dikeluarkan. Defendan pula telah menunjukan penerimaannya berkenaan perkara ini kepada plaintif, dalam makna s 2(b) AK, sebelum pengeluaran inuis dan PO. Inuis dan PO tidak terjumlah kepada cadangan dan penerimaan dalam maksud s 2(a) dan (b) AK (lihat perenggan 21).
- (2) Hakim sesyen tidak terkhilaf dalam fakta semasa memutuskan bahawa perjanjian telah diselesaikan. Peninggalan defendan untuk menafikan penyata akaun mengestopnya daripada menafikan kewujudan perjanjian dan fakta bahawa jumlah penghakiman yang terhutang daripada defendan kepada plaintif. Mahkamah mengguna pakai doktrin estoppel terhadap defendan (lihat perenggan 22).
- (3) Hakim sesyen betul dalam memutuskan bahawa perjanjian tersebut telah diselesaikan. Tiada asas untuk menerima bahawa defendan telah secara salah membuat sebahagian daripada bayaran tersebut. Defendan hanya membuat tuntutan balas bahawa sebahagian pembayaran tersebut telah dibuat secara salah apabila pemfailan tuntutan asal dibuat di mahkamah sesyen. Adalah jelas bahawa tuntutan balas tersebut adalah satu perkara yang difikirkan semula untuk tujuan menghalang tuntutan asal (lihat perenggan 23).]

Cases referred to

- Boustead Trading [1985] Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331; [1995] 4 CLJ 283, FC (refd)
- CFB Aluminium Extrusion Sdn Bhd v Lim Soon Seng* [2014] 1 LNS 1311, HC (refd)
- Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309, FC (refd)
- Jetara Sdn Bhd v Maju Holdings Sdn Bhd* [2007] 3 MLJ 609; [2007] 3 CLJ 41, CA (refd)
- TH Heavy Engineering Bhd v Daba Holdings (M) Sdn Bhd (formerly known as Dugwoo (M) Sdn Bhd)* [2018] 7 MLJ 1, HC (refd)
- Tan Ah Kow & Anor v Tan Chau En* [2017] 6 MLJ 297, CA (refd)
- Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229, FC (refd)
- Wasco Lindung Sdn Bhd v Lustre Metals & Minerals Sdn Bhd* [2015] 9 MLJ 610, HC (refd)
- Windsor Aims Construction Sdn Bhd v Mnq Builders Sdn Bhd & Ors* [2017] MLJU 2039, HC (refd)

Wong Hon Leong David v Noorazman bin Adnan [1995] 3 MLJ 283; [1995] 4 CLJ 155, CA (refd) **A**
Zi Productions Sdn Bhd v SACC Convec Sdn Bhd [2017] MLJU 945, HC (refd)

Legislation referred to

Contracts Act 1950 ss 2(a), (b) **B**
 Courts of Judicature Act 1964 s 27
 Evidence Act 1950 ss 8(2), 115
 Rules of Court 2012 O 16 r 1(1)(a), O 55 rr 2, 3

Rusdy bin Ishak (Lim & Yeoh) for the appellant. **C**
Ishtaf Hakim bin Mohd Nadzri (G Ragumaren & Co) for the respondent.

Wong Kian Kheong J:

BACKGROUND **D**

[1] This appeal raises a novel question of whether there can be a contract to provide services when an invoice is issued by a party providing the services before the issuance of a purchase order ('PO') by the party who receives the benefit of the services. This issue concerns an interpretation of the definitions of 'proposal' and 'acceptance' in s 2(a) and (b) of the Contracts Act 1950 ('the CA') respectively. **E**

[2] The respondent ('plaintiff') has filed a claim ('original action') in the sessions court ('SC') against the appellant company ('defendant'). I will refer to parties in this judgment as they are in the SC. **F**

[3] The defendant has filed a counterclaim against the plaintiff ('counterclaim'). **G**

[4] The learned SC judge ('SCJ') has:

- (a) allowed the original action with the following orders: **H**
 - (i) the defendant shall pay a sum of RM262,201.96 ('judgment sum') to the plaintiff;
 - (ii) the defendant shall pay to the plaintiff interest at the rate of 5%pa on the judgment sum from the date of filing of the original action until the date of full payment of the judgment sum; and **I**
 - (iii) the defendant shall pay costs of RM10,058 to the plaintiff; and
- (b) dismissed the counterclaim with costs of RM841 ('SCJ's decision').

- A** [5] This is the defendant's appeal to the High Court against SCJ's decision ('this appeal').

ISSUES

- B** [6] This appeal raises the following two questions:
- (a) whether there was an agreement between the plaintiff and defendant for the plaintiff to supply manpower to the defendant when invoices were first issued by the plaintiff before the issuance of the defendant's PO's; and
- C** (b) whether the defendant is estopped by its conduct from denying the existence of the agreement. This issue also concerns whether the defendant has erroneously made a part payment to the plaintiff.

D THE PLAINTIFF'S CASE

[7] The plaintiff is the sole proprietor of Hong Jaya Engineering Works. The plaintiff testified as follows, among others:

- E** (a) there was an agreement between the plaintiff and defendant for the plaintiff to supply manpower to the defendant ('agreement') in the following manner:
- (i) the plaintiff would provide manpower services to the defendant for two projects, 'BF Plant Project' and 'Sinter Project' ('two projects') from May until October 2015 ('services'); and
- F** (ii) there was an 'understanding' between the plaintiff and defendant for the services to be first provided by the plaintiff and only then, the plaintiff would issue an invoice. After the defendant had received the invoice, the defendant would issue a PO;
- G** (b) after the plaintiff had provided the services, the plaintiff issued 12 invoices (dated 31 May 2015–31 October 2015) to the defendant (12 invoices) for a total sum of RM306,766.59 (outstanding sum). Attached to the 12 invoices are detailed records regarding, among others, the time periods for the rendering of services for the two projects ('attachments to invoices');
- H** (c) after the defendant received the 12 invoices, the defendant issued 12 PO's (all dated 1 April 2016) to the plaintiff (12 PO's) regarding the outstanding sum; and
- I** (d) regarding two of the 12 invoices, the defendant made a part payment of RM44,565.53 ('part payment') by way of the defendant's cheque dated 20 April 2016 ('defendant's cheque'). The defendant issued a payment voucher dated 20 April 2016 regarding the part payment ('PV').

[8] Ms Gan Poh Wei ('SP2') is the plaintiff's wife and assistant. SP2 has a diploma in accounting. The 12 invoices and their attachments were prepared by SP2.

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[9] The original action has been filed to recover the judgment sum (the balance of the outstanding sum after deducting the part payment).

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THE DEFENDANT'S CASE

[10] Mr Chong Fu Seong ('SD1') is the defendant's Managing Director. SD1 is the plaintiff's brother-in-law and SP2 is SD1's sister. According to SD1, among others:

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- (a) the defendant had been appointed by Eastern Steel Sdn Bhd ('ES') to do the 'internal handling' of the two projects ('work');
- (b) the defendant then entered into a joint venture agreement with Anggun Holding Sdn Bhd ('AH') wherein:
 - (i) the defendant would provide the equipment and machinery for AH to do the work; and
 - (ii) AH would submit claims to the defendant regarding the work done by AH. The defendant would then submit the 'total production sales' to ES. The profit derived from these sales (JV profit) would be divided between AH and the defendant according to an agreed calculation;
- (c) the three directors and shareholders of AH are the plaintiff, SP2 and Mr Gan Son Hock ('Mr Gan'). Mr Gan is the plaintiff's father-in-law;
- (d) the defendant adduced at the trial in the SC the following evidence:
 - (i) invoices, delivery orders, statements of workers' salaries and claim forms issued by AH to the defendant ('AH's Documents'); and
 - (ii) summary reports regarding the calculation of the JV profit;
- (e) the defendant did not agree for the plaintiff to supply labour for the two projects; and
- (f) SD1 had signed the 12 PO's, PV and the defendant's cheque on behalf of the defendant by mistake because:
 - (i) SD1 signs many PO's, PV's and cheques daily; and
 - (ii) SD1 'did not think much' when he signed the 12 PO's, PV and the defendant's cheque as the plaintiff is SD1's brother-in-law.

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A [11] Mr Tee Jiun Leong ('SD2') is the defendant's Accounts Manager. SD2 had prepared the 12 PO's, PV and the defendant's cheque because of the insistence of the plaintiff as SD1's brother-in-law.

B [12] The counterclaim sought for the plaintiff to refund the part payment to the defendant.

SCJ'S DECISION

C [13] The SCJ's decision is based on the following grounds:

- D** (a) as admitted by SD1, AH's documents did not concern the supply of manpower;

(b) the PO's constituted an offer from the defendant for the services to be provided by the plaintiff. After the plaintiff had provided the services, invoices were issued by the plaintiff to the defendant;
- (c) the existence of the agreement was proven by the PO's and invoices;

(d) the defendant's contention that the part payment was due to a mistake (as the defendant had paid AH), was an afterthought because:

 - E** (i) the 12 PO's were issued to the plaintiff and not AH;

(ii) the defendant did not withdraw the 12 PO's; and
 - F** (iii) the defendant issued the PV and made the part payment. The defendant did not retract the PV;
- (e) regarding the defendant's submission that the 12 invoices had been issued before the 12 PO's, the learned SCJ considered the family relationship between the plaintiff and SD1 and gave allowance to the 'loose' documentation in respect of the agreement. Furthermore, the plaintiff and defendant had the freedom regarding the execution of the agreement and its documentation;

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- (f) the SC did not accept SD1's allegation that the stamp on the 12 invoices was not the defendant's because:

 - H** (i) such an allegation was not pleaded in the defence and counterclaim and was only raised for the very first time when SD1 testified in SC;

(ii) this allegation was made to enable the defendant to evade liability to the plaintiff under the agreement;

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 - (iii) SD1 has admitted that the defendant possesses more than one stamp;

(iv) SD2 had been given the 12 invoices by the plaintiff and could have

detected whether the defendant's stamps on the 12 invoices had been forged; and

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- (g) the learned SCJ rejected the defendant's contention that the part payment had been made in haste because the defendant had about one month to verify the plaintiff's claim for the outstanding sum before the defendant issued the PV. Hence, the SC dismissed the counterclaim.

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JUDICIAL APPROACH

[14] The High Court has jurisdiction to hear appeals after trials from subordinate courts pursuant to s 27 of the Courts of Judicature Act 1964 read with O 55 rr 2 and 3 of the Rules of Court 2012 ('the RC').

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[15] As the High Court has no audio-visual advantage:

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- (a) to listen to the oral evidence of witnesses given in the lower courts; and
(b) to assess the demeanour of witnesses:

— as a general rule, the High Court shall not intervene regarding the trial court's findings of fact, especially regarding their findings regarding the credibility of witnesses, unless there is a plain error of fact by the trial court which has caused an injustice and warrants appellate intervention — please see the judgment of Steve Shim CJ (Sabah and Sarawak) in the Federal Court case of *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1 at pp 7–11; [2004] 4 CLJ 309, at pp 317–321.

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WHETHER PO MUST PRECEDE INVOICE

[16] The defendant contends that the learned SCJ has erred in finding that the agreement exists based on the PO's and invoices. According to the defendant's learned counsel, the agreement could not exist as the PO's were only issued after the invoices. Reliance has been placed on the following decisions:

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- (a) the judgment of Yeoh Wee Siam J (as she then was) in the Court of Appeal case of *Tan Ah Kow & Anor v Tan Chau En* [2017] 6 MLJ 297 at para 26;
(b) Zalita Zaidan JC's judgment in *Zi Productions Sdn Bhd v SACC Convec Sdn Bhd* [2017] MLJU 945, at para 40;
(c) the decisions of Lim Chong Fong J in:
(i) *Windsor Aims Construction Sdn Bhd v Mng Builders Sdn Bhd & Ors* [2017] MLJU 2039, at para 42; and

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- A (ii) *CFB Aluminium Extrusion Sdn Bhd v Lim Soon Seng* [2014] 1 LNS 1311, at paras 16–17; and
- (d) Khadijah Idris JC's decision in *TH Heavy Engineering Bhd v Daba Holdings (M) Sdn Bhd (formerly known as Dugwoo (M) Sdn Bhd)* [2018] 7 MLJ 1 at para 27.
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[17] Section 2(a) and (b) of the CA provide as follows:

s 2 Interpretation

- C *In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:*

- (a) *when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence, he is said to make a proposal;*
- D (b) *when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal, when accepted, becomes a promise; (Emphasis added.)*

- E [18] Firstly, there was no written contract between the plaintiff and defendant in this case. In *Wasco Lindung Sdn Bhd v Lustre Metals & Minerals Sdn Bhd* [2015] 9 MLJ 610 at para 13, I have decided as follows:

- F 13. *The lack of a written contract in this case means that it is incumbent on this court to consider all the documents to ascertain whether there is a contract of sale of aluminium ingots. I rely on the judgment of Ismail Khan CJ (Borneo) in the Federal Court case of Lau Sieng Nguong v Hap Shing Co Ltd* [1969] 1 MLJ 190, at 192, as follows:

- G *It is clear law that where a contract is to be deduced from a set of documents it is necessary to look into the whole of the correspondence between the parties to see if the parties have come to a binding agreement (see Hussey v Horne-Payne [1879] 4 App Cas 311, Bristol Cardiff and Swansea Aerated Bread Co v Maggs [1890] 44 Ch D 616, May v Thomson [1882] 20 Ch D 705 723 and Lau Brothers & Co v China Pacific Navigation Co Ltd [1965] 1 MLJ 1). (Emphasis added.)*

The above decision in *Wasco Lindung* has been affirmed by the Court of Appeal.

- H [19] The definition of 'proposal' in s 2(a) of the CA does not require a proposal by an offeror to be in the form of a PO or in any other particular form. Nor does the definition of 'acceptance' in s 2(b) of the CA state that a PO can only be accepted by way of an invoice. The literal meaning of the definitions of 'proposal' and 'acceptance' in s 2(a) and (b) of the CA is wide and does not support a restrictive interpretation. Furthermore, the CA is a general statute which applies to all contracts. Any narrow construction of the definitions of 'proposal' and 'acceptance' in s 2(a) and (b) of the CA does not facilitate trade and commerce and may cause uncertainty in commercial transactions.
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[20] In deciding whether a contract has been concluded between the parties: A

- (a) the court has to ascertain whether there has been a 'proposal' (defined in s 2(a) of the CA) by one party which has been 'accepted' by the other party (within the meaning of s 2(b) of the CA). This is a question of fact dependent on:

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(i) the documents;

(ii) the conduct of parties;

(iii) oral evidence; and

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(iv) all the surrounding circumstances of the case in question; and

- (b) decided cases on whether there are binding agreements or otherwise, cannot constitute binding precedents from the view point of the stare decisis doctrine because such cases are decided based on their particular facts. All the cases cited by the defendant concerned the particular evidence of those cases wherein the PO constituted an offer (as understood in s 2(a) CA) and the invoice amounted to an acceptance of the PO (within the meaning of s 2(b) CA).

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[21] In this case, based on the plaintiff's testimony:

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- (a) the plaintiff had signified to the defendant the plaintiff's willingness to provide the services (within the meaning of s 2(a) CA) before the issuance of the 12 invoices and 12 PO's; and

- (b) the defendant had signified his assent to the above proposal by the plaintiff (as understood in s 2(b) CA) before the issuance of the 12 invoices and 12 PO's.

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In other words, the agreement had been concluded (as explained above) even before the issuance of the 12 invoices by the plaintiff. In this case, the 12 invoices (their attachments) and 12 PO's did not constitute a 'proposal' and 'acceptance' within the meaning of s 2(a) and (b) CA respectively.

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DID THE AGREEMENT EXIST?

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[22] Sitting as an appellate judge, I find that there is no plain error of fact when the learned SCJ decide that the agreement had been concluded. This finding is supported by the following evidence and reasons (in addition to the SCJ's decision as elaborated in the above para 13):

- (a) by a letter dated 4 October 2016, the plaintiff's solicitors had demanded the defendant to pay the judgment sum ('the plaintiff's demand'). The defendant did not reply to, let alone deny, the plaintiff's demand. In a commercial relationship, when one business entity ('X') alleges that another business entity ('Y') owes X a sum of money, Y's failure to deny

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- A X's allegation may amount to an admission of Y's indebtedness to X. On this matter, I rely on the following two decisions of the Court of Appeal:
- (i) Gopal Sri Ram JCA's (as he then was) judgment in *Wong Hon Leong David v Noorazman bin Adnan* [1995] 3 MLJ 283 at p 289; [1995] 4 CLJ 155 at p 159; and
- B (ii) the decision of Hasan Lah JCA (as he then was) in *Jetara Sdn Bhd v Maju Holdings Sdn Bhd* [2007] 3 MLJ 609 at p 618; [2007] 3 CLJ 41 at p 55;
- C (b) the plaintiff had sent a 'statement of account' dated 30 June 2016 to the defendant ('plaintiff's statement of account'). The plaintiff's statement of account stated, among others, as follows:
- (i) details regarding the outstanding sum, part payment and judgment sum; and
- D (ii) 'ANY DISCREPANCY IN THIS STATEMENT PLEASE INFORM US IN WRITING WITHIN 10 DAYS'.
- E The defendant failed to inform the plaintiff in writing within ten days from its receipt of the plaintiff's statement of account that the defendant did not owe any sum of money to the plaintiff. In fact, the defendant had not denied the plaintiff's statement of account at any time. A party's conduct is relevant under s 8(2) of the Evidence Act 1950 ('EA') — please see Chang Min Tat FJ's judgment in the Federal Court in *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229 at p 234.
- F The defendant's omission to deny the plaintiff's statement of account estops it from denying the existence of the agreement and the fact that the judgment sum due from the defendant to the plaintiff. I apply the doctrine of equitable estoppel against the defendant based on the following:
- G (i) s 115 of the EA which reads as follows:
- H When one person has by his *declaration, act or omission* intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for that belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and that person or his representative in interest to deny the truth of that thing. (Emphasis added.); and
- I (ii) the Federal Court's judgment delivered by Gopal Sri Ram JCA (as he then was) in *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331 at pp 343–344; [1995] 4 CLJ 283 at pp 294–295;

- (c) if the defendant had indeed paid for the services by paying AH, there was no reason why the defendant could not have instituted third party proceedings against AH in this case for an indemnity (in the event the original action is allowed against the defendant — please see O 16 r 1(1)(a) of the RC); and A
- (d) the lack of credibility and bona fides on the part of the defendant's witnesses is clear when the defendant puts forward the following two conflicting defences: B
 - (i) the defendant did not enter into the agreement regarding the services; and C
 - (ii) the defendant had paid AH for the services.

WHETHER PART PAYMENT WAS MADE ERRONEOUSLY

[23] As the learned SCJ had correctly decided that the agreement had been concluded (please see the above paras 13 and 22), there was no basis to accept that the defendant had mistakenly made the part payment. Furthermore, the defendant only counterclaimed that the part payment was made erroneously after the filing of the original action. It is thus clear that the counterclaim is an afterthought with the sole purpose of stifling the original action. D

CONCLUSION

[24] Premised on the above evidence and reasons, this appeal is dismissed with costs. E

Appeal dismissed.

Reported by Izzat Fauzan F

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